

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1041 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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LAXMIBEN N KAPADIA

Versus

BUMIKABEN A KAPADIA

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Appearance:

MR MAYANK DESAI for Petitioner

MS PAURAMI B SHETH for Respondent No. 1, 2

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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 13/08/97

ORAL JUDGEMENT

1. This CRA is preferred by Laxmiben Nagjibhai Kapadia who happens to be the mother of the deceased who died in a vehicular accident. It appears that in the vehicular accident that occurred the Motor Accident Claims Tribunal awarded total amount of Rs.5,50,000/and apportioned the same by awarding Rs.2 lacs to the widow of the deceased and Rs.2 lacs to two minor children of

the deceased. Amount of Rs.1 lacs was awarded to the mother of the deceased. While passing the said award the tribunal has also issued necessary directions with regard to investment of awarded amount by way of FDRs in any nationalized bank or in any trust or in Housing Finance Develop Corporation. The present petitioner who is the mother of deceased has no objection to the amount awarded by the tribunal and to award of Rs.2 lacs to the widow of the deceased and Rs.1,25,000/- each to the minor children. His grievance is as regards the amount of award of Rs.1 lac which is awarded to the mother who is a class I heir and who is aged. The tribunal has by judgment and award dated 3.10.92 issued directions that the amount of Rs.1 lac which is awarded to the mother shall be invested by way of FDR and the amount of interest which may accrue thereon may be paid to the mother initially for a period of five years and with further direction that it may be renewed for further period of five years. Therefore, for a period of ten years she will be entitled to earn interest on the amount of Rs.1 lac and nothing more. The tribunal, thus, denied the amount of Rs.1 lac to the aged mother for a period of ten years and she is only entitled to earn interest on such amount which may approximately work out to Rs.2,000/-per month.

2. The mother thereupon filed the Miscellaneous Civil Application before the tribunal and interalia urged that looking to her age she should be awarded the full amount and that no condition of depositing such amount in a scheduled Nationalized Bank should be imposed as she is entitled to receive the full amount awarded to her at a time.

3. Mayank Desai appearing for the mother, the petitioner herein, has submitted that thereafter the mother moved Miscellaneous Application No.38/94 before the tribunal and pointed out that the condition imposed upon the mother of depositing the full amount in a nationalized bank and earning interest thereon initially for a period of 5 years and thereafter for further five years would block the amount and she would not be in a position to get any amount whatsoever. In the Misc.C.A. it was contended by the mother that the condition was imposed by the tribunal to deposit the amount of Rs.1 lac in any nationalized bank for five years and that the same is to be renewed for further period of five years. The tribunal also stipulated condition that in the event of her death the amount fixed as deposit shall go to the original applicant Nos 2 & 3, i.e. minor children of the deceased. In his submission such condition could not be

imposed against mother being the Class I heir she is also entitled to get the amount along with widow and minor children of the deceased. The request was made to the tribunal that the condition to depositing the amount of Rs.1 lac awarded to the mother shall be set aside and the amount awarded to mother should be fully awarded to her for the disposal thereof as per her will. She can not be thereafter directed that after death the amount awarded shall go to the minors of the deceased.

4. Miss P.B.Sheth, on the other hand, pointed out the reason why such conditions are being imposed and why the Supreme Court has also subsequently confirmed the condition of depositing of amount in a nationalized bank. It is the second part of the condition that whatever balance amount is left or the full amount awarded to the mother shall after period of ten years or the in the event of death, whichever occurs earlier, go to minor children of the deceased son. Imposition of such condition according to the petitioner is bad in law as the mother is totally deprived of her share which is already awarded to her and by the imposition of condition she can atleast earn interest on such amount but she can not get anything more. Since the amount is awarded to the mother she is entitled to deal with the amount in the manner she likes and the tribunal has no jurisdiction to pass award or modify the award as is done by the order in Misc.C.A.

5. On the other hand, the widow of the deceased--Sudha Kapadia has appeared and has filed the affidavit-in-reply as guardian of the minor children and she has contended that the mother was not the dependent on the income of the husband and she was simply joined as opponent as necessary party. It was further contended by her that the deceased was B.E.Mechanical Engineer and was serving in the IPCL and on the death of son the IPCL has also paid Rs.12 lacs to the mother as amount of PF. In fact, this argument has no substance because she being the nominee she is entitled to the amount which was paid to her. The second factor which was pressed into service is that the mother was never living with deceased son and that she was always residing separately. The marriage between the deceased and the widow of the deceased was a love marriage without the consent of the mother and therefore the mother as such was not in any way dependent upon the deceased son. She can, at the most, claim right of maintenance. The tribunal has however awarded amount of Rs.1 lac to the mother and has imposed condition to deposit the amount for a period of ten years and has thereafter provided that in the event of death of the

mother the balance amount or the full amount shall be paid to the minor children of the deceased. This condition according to Mr.Desai is not legal and valid and he further submitted that the condition to deposit the amount for ten years in any scheduled nationalized bank or Unit Trust, if accepted, to be just and proper, is not legal and valid when the tribunal has further directed that after the death of mother such amount shall go to two minor children of the deceased. On this point though Mr.Desai may be on better footing, the guidelines which are laid down by the Apex Court in the case of *LnILABEN UDESING GOHEL vs ORIENTAL INSURANCE CO.LTD* reported in AIR 1996 SC 1605, which are reproduced herein, shall have to be kept in mind:

"(i) The claims tribunal should, in case of minors, invariably order the amount of compensation awarded to the minor invested in long term fixed deposits at least till the date of the minor attaining majority. The expenses incurred by the guardian or next friend may however be allowed to be withdrawn.

(ii) In the case of illiterate claimants also the claims tribunal should follow the procedure set out in (i) above, but if lumpsum payment is required for effecting purchases of any moveable or immoveable property, such as agricultural implements, rickshaws, etc to earn a living, the tribunal may consider such a request after making sure that the payment is actually spent for the purpose and the demand is not a ruse to withdraw money;

(iii) In the case of semi literate persons the tribunal should ordinarily resort to the procedure set out at (i) above unless it is satisfied, for reasons to be stated in writing, that the whole or part of the amount is required for expanding and existing business or for purchasing some property as mentioned in (ii) above for earning his livelihood in which case the tribunal will ensure that the amount is invested for the purpose for which it is demanded and paid.

(iv) In the case of literate persons also the tribunal may resort to the procedure indicated in (i) above subject to the relaxation set out in

(ii) and (iii) above, if having regard to the age, fiscal background and strata of society to which the claimant belongs and such other considerations. The tribunal in the larger interest of the claimant and with a view to ensuring the safety of the compensation awarded to him thinks it necessary to do order.

(v) In the case of widows the claims tribunal should invariably follow the procedure set out in (i) above;

(vi) In personal injury cases if further treatment is necessary the claims tribunal on being satisfied about the same, which shall be recorded in writing, permit withdrawal of such amount as is necessary for incurring the expenses for such treatment;

(vii) In all cases in which investment in long term fixed deposits is made, it should be on condition that the Bank will not permit any loan or advance on the fixed deposits and interest on the amounts invested is paid monthly directly to the claimant or his guardian, as the case may be.

(viii) In all cases the tribunal should grant to the claimants liberty to apply for withdrawal in case of an emergency. To meet with such contingency, if the amount awarded is substantial, the claims tribunal may invest it in more than one fixed deposit so that if need be one such FDR can be liquidated".

6. On going through the aforesaid guidelines which are prescribed in the aforesaid case by the Apex Court one thing is certain that the anxiety of the court was to see that the amounts which were awarded to the claimants or to the heirs of the deceased person are not frittered and the amounts are really utilised and ultimately goes to the hands of the person who is entitled to the same. However, in the case of aged person like mother who is also entitled to the amount of compensation the guidelines to the extent of depositing the amount in a nationalized bank and to receive interest thereon is just and proper and the condition that after the death of mother the amount shall go to the minor children of the deceased is inconsistent with the principle of law and it

should go to the mother of the children. This point undoubtedly requires consideration as the amount which is awarded to the mother can not be permitted to be passed over to the minor children. However, looking to the facts and circumstances, it would be just and proper at this stage to award amount of Rs.30,000/- to the mother on maturity of FDR in a nationalized bank without furnishing any surety and for the balance amount the guidelines would operate for a period of ten years only to the extent of paying interest to the mother and further guidelines to pass over the amount to the minor children would not be treated as legal and valid. It may be noted that the widow of the deceased in her affidavit-in-reply has very strenuously urged and pointed out that the mother was joined as she was Class I heir and that the mother has also received amount of PF on the death of son from IPCL. Secondly, it is also pointed out that as the deceased son has married against the wishes of parents-in-law and since the marriage the deceased was staying separately with children and the mother has never cared for the deceased and she has put forward the claim for additional amount that is awarded to her. She has also stated that it shall have to be kept in mind that the mother has three other sons and she has got agricultural land as against which the widow and her minor children have nothing to fall back upon excepting the amount awarded to them. Keeping all these factors in mind as well as the affidavit in rejoined which is filed by the mother one shall have to state that at this stage interest of justice will be served if the amount of Rs.30,000/- is permitted to be paid to the mother on maturity of FDR at the initial period of first five years and balance amount shall continue to remain in the FDR. Direction which is given by the tribunal that the balance amount shall thereafter go to the minor children is not legal and valid and therefore can not be accepted and is quashed and set aside.

7. In the result, this CRA succeeds to the aforesaid extent and rule is partially made absolutely to the aforesaid extent. No costs.

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